IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4875 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JADABEN MAGANBHAI BHOI & 1 - Petitioner(s)
Versus
JASHIBEN KHODABHAI & 1 - Respondent(s)

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Appearance :
MR BJ JADEJA for Petitioner(s) : 1 - 2.
None for Respondent(s) : 1,
MR NALIN K THAKKER for Respondent(s) : 1.2.1, 1.2.2, 1.2.3, 1.2.4,1.2.5
MR PRADIP D.BHATE, AGP. for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
Date : 10/04/2006

ORAL JUDGMENT

1 This petition pertains to land bearing survey No.161 of Vavpura which is a hamlet of village Kherda in Anand Taluka of Kheda district (as

it then was). The petitioners and respondent Nos. 1/1 to 1/5 all belong to the same hamlet and are descendants of common ancestor named Punjabhai Kabhaibhai (deceased). The disputed land, along with various other lands, formed part of jagir land whose talukdars were Arjunsinh and Chhatrasinh. On abolition of talukdari tenure by virtue of Bombay Talukdari Abolition Act,1949 (the Act) the jagir lands vested in the State Government. Deceased Maganbhai Shanabhai, claiming through his father Govindbhai, as well as deceased Khodabhai Popatbhai, claiming through deceased Govindbhai, were cultivating the disputed land along with other lands along with their uncle Ravabhai Nathabhai (since deceased). As required by the Act the cultivators made payment of the occupancy price to the Talukdars and obtained possession as of right by virtue of the provisions of the Act.

2 The Additional Mamlatdar & ALT, Anand initiated proceedings under section 32G of the Bombay Tenancy and Agricultural Lands Act,1948 (the Tenancy Act) in case No.KHERDA-68/76, 69/76, 70/76, 83/76 and 84/76. Ravabhai Nathabhai, Khodabhai Popatbhai and Maganbhai Shanabhai were shown as tenants and the owners of the land were Yashvantsinh Arjunsinh and Sajjankuvarba Chhatrasing through heir Yashvantsinh Arjunsinh. In the said proceedings the

statement of Yashvantsinh Arjunsinh was recorded on 5/8/1977, similarly statement of Maganbhai Shanabhai was recorded on 5/8/1977 and confirmatory statements of Ravabhai Nathabhai and Khodabhai Popatbhai were recorded on the same day. The Addl. Mamlatdar and ALT came to the conclusion that the proceedings were not governed by the Tenancy Act but were governed by provisions of the Act, and hence, recorded that as the so called tenants were cultivating land as owners there was no question of effecting sale under the Tenancy Act; therefore the inquiry which was initiated under section 32G of the Tenancy Act was ordered to be closed and dropped. This order was made on 16/8/1977.

3 On 8/6/1988 the petitioners moved an application seeking deletion of name of Khodabhai Popatbhai from the record of rights pertaining to survey No.161, wherein his name was shown as second holder. Accordingly on 8.6.1988 entry No.1305 came to be made. In the meantime an application was moved by respondent Nos. 1/1 to 1/5 objecting to the aforesaid entry No.1305 dated 8.6.1988 and the same was entered on 13/14-6-1998 in the Disputes Register. Accordingly Deputy Mamlatdar , Anand vide order dated 31/8/1989 in case No.48/88 and 56/88 made an order, and after rejecting objections of the

respondents, certified entry No.1305. The respondents thereupon preferred appeal before the Deputy Collector, Anand which came to be decided vide order dated 2/2/1991. The Deputy Collector accepted the appeal partly and directed the Mamlatdar & ALT to find out as to who had paid what amount; and how the land devolved, and was partitioned etc. were required to be decided after hearing the parties and taking evidence on record. Thus, an order of partial remand was made.

4 The petitioners went in revision before Collector, Kheda who accepted Revision Application bearing No.RTS/RA/24/91 vide order dated 6/10-6-1992. It was observed that challans depicting payment in 1958-59 would not be available with any of the parties at this length of time and hence, direction made by Deputy Collector to inquire as to who had paid how much amount was struck down. The Collector incidentally observed whether it was necessary to effect any change in the record on the basis of order of 1977 made by the Mamlatdar & ALT. He therefore confirmed the order of remand after deleting the direction regarding inquiry about payment.

5 Being aggrieved by the said order the petitioners herein went in revision before the State Government. The said Revision Application

bearing No.SRD/KHD/HKP-13/1992 came to be decided by order dated 31/3/1997 whereunder the order made by the Collector came to be confirmed.

6. Assailing the aforesaid order made by the State Government Mr.B.J.Jadeja , learned Advocate submitted on behalf of the petitioners that the order of remand was bad in law as the revenue authorities were not empowered to record any decision as regards title, the only dispute being in relation to entries, more particularly Entry No.1305 dated 8/6/1988 whereby name of deceased Khodabhai Popatbhai came to be deleted from the record relating to land bearing survey No.161. It was submitted that vide order dated 16/8/1977 of Mamlatdar & ALT family arrangement in the form of partition had been recorded and there was no dispute that the payment under the Act had been made in favour of talukdar. That the predecssor in title, Maganbhai Shanabhai had made a statement before the Mamlatdar & ALT, which had been confirmed by Ravabhai Nathabhai and Khodabhai Popatbhai on the same day. He, therefore, urged that the said order was a good piece of evidence showing which parcel of land went to whom and at this length of time any order of remand would prove to be a futile exercise. The order made by the Revisional

Authority confirming the order of Collector was therefore required to be quashed and set aside.

7. Resisting the submission made, the learned Advocate for the respondent read extensively from the affidavit-in-reply to contend that in the first instance the order of Mamlatdar & ALT dated 16/8/1977 was not a valid order as the proceedings were not under the Tenancy Act as he himself has recorded. That as the proceedings had been dropped the same would not constitute an order on merits, and in the circumstances any statement recorded in course of such proceedings could not be relied upon. However, referring to the statement dated 5/8/1977 of Yashvantsinh Arjunsinh it was submitted that the said statement clearly went to show that the land was jointly cultivated by all the three parties who were descendants of the common ancestor and therefore assumption should be raised that price of the land deposited in the treasury under the provisions of the Act was by all the three parties jointly. According to him, therefore, there was no occasion to interfere with the impugned order made by the revisional authority. In support of the submission made he also referred to provisions of Section 87A of the Tenancy Act.

8 As can be seen from the first order made by the Deputy Collector on 2/2/1991, he allowed the appeal of the respondent partly on the ground that which of the cultivators had paid what amount, relatable to which survey number, was not emanating from the order dated 16/8/1977 made by Mamlatdar & ALT and therefore, it was necessary to make inquiry on this count. It is also recorded that it was necessary to find out survey No.161 had come to whose share, as to who had made the payment for the said parcel of land. Thereafter, in the operative portion of the order while remanding the matter he has further observed as to how partition had taken place and who has received which property in what share, was required to be inquired into and ascertained.

9 The order of remand came to be confirmed by Collector, Kheda but he did not approve the reasonings of the Deputy Collector and deleted the direction regarding inquiry relatable to the payment. In other words the exercise of co-relating payment vis-a-vis the person or the survey number was found to be infeasible, considering the period which had elapsed since 1958-59. This order has been confirmed by the Revisional Authority.

10 It is not possible to uphold the order made by the Revisional

Authority and Collector , Kheda for the simple reason that both the authorities have lost sight of the fact that the parties had never raised any dispute, in the first instance, regarding which property had gone to whom and what was the share which had come to one or the other party. The dispute emanated only on making of Entry No.1305 dated 8/6/1988 whereby name of Khodabhai Popatbhai came to be deleted from the record as relating to land bearing Survey No.161. All the authorities, including Deputy Collector, failed to appreciate the order dated 16/8/1977 made by Mamlatdar & ALT and have merely recorded that no proceedings could be taken under the provisions of the Tenancy Act, but that did not detract from the findings recorded in the order, and hence, the order as such being pressed into service as a piece of evidence. In fact, it is necessary to note that none of the authorities have in effect come to the conclusion that the said order cannot be treated as a valid piece of evidence. That contention has come for the first time on behalf of the respondents in the present proceedings. The statements of the land holder viz. Talukdar and the cultivators recorded at that point of time also did not cease to have evidentiary value, as it is nobody's case that those statements were not made by the persons in whose name they are recorded. If the said evidence is read as a whole it is apparent that Maganbhai Shanabhai has categorically referred to in his statement

dated 5/8/1977 as to which parcel of land has devolved on whom. It is further stated in his deposition what payment has been made for the lands whose survey numbers have been mentioned in sub-paragraph No.1 of the statement. In sub-paragraph No.2 of the statement of Maganbhai Shanabhai, it has been categorically stated as to what parcels of lands have gone to the share of Khodabhai Popatbhai, and similarly in sub-paragraph No.3 what parcel of land has gone to the share of his uncle Ravabhai Nathabhai. Therefore, the statement on the one hand positively states as to what lands have fallen to share of Maganbhai Shanabhai and on the other hand also records what lands have fallen to other persons viz. Khodabhai Popatbhai and Ravabhai Nathabhai. However, what is more important is the confirmatory statement made both by Khodabhai Popatbhai and Ravabhai Nathabhai who have categorically stated that they have heard the deposition of Maganbhai Shanabhai which was made and recorded in their respective presence, that what is stated therein is true and correct, that each one of them agrees to the same and has nothing further to add. The contention on behalf of the respondents that the said statements could not be looked into and were not relevant, cannot be accepted for the simple reason that they were the statements made by the persons at the relevant point of time before the competent authority and merely because after recording

evidence if the authority came to the conclusion that the proceedings need not be continued further, neither evidence, nor the averments, nor the findings in the order can be treated to have become invalid only because the proceedings were dropped under the Tenancy Act. The authority had simultaneously recorded that the statements reflected the division of the properties, the payment made under the Act and the receipt of the amount by Talukdar. Therefore, the order was reflecting and recording proceedings under the Act which had taken place.

11 In face of this evidence it was not permissible to any of the authorities to direct a remand. The Deputy Collector had based his order of remand on the reasoning that who has paid the amount qua which survey number had not been inquired into, but the said reasoning has not been found to be sustainable by the Collector. Then the only inquiry which was ordered in the operative portion of his order by the Dy. Collector contemplated was as to what share of the land had fallen to which of the parties. The Collector and the Revisional Authority failed to appreciate that this was never in controversy in the first instance, and secondly, this inquiry was never part of the reasoning but appeared only in the operative portion of the order of the Deputy Collector, was without any supporting reasons and could not have been confirmed by the

Collector and/or Revisional Authority.

12 In the aforesaid circumstances, the impugned order dated 31/3/1997 made by Deputy Secretary (Appeals) Revenue Department in Revision Application No. No.SRD/AHD/HKP-13/1992 confirming the order made by Collector, Kheda on 3.4.1995 in RTS Appeal No.24/91 and order of Deputy Collector dated 2/2/1991 in RTS Appeal No.54 of 1999 are hereby quashed and set aside. The petition is allowed accordingly. Rule is made absolute. There shall be no order as to costs.

(D.A.MEHTA, J)

m.m.bhatt